creditor of X, sued to have the sale set aside as void under the statute. *Held,* that though none of the property conveyed came within the meaning of the term "fixtures," as used in the act, still the caskets, steel vaults, robes and casket hardware comprised "merchandise," within the meaning of the act, and for that reason the sale of the "merchandise" was void as against plaintiff, a creditor of Howell's, inasmuch as plaintiff received no notice from defendant. *People's Savings Bank* v. *Van Allsburg* (Mich. 1911) 131 N. W. 101.

Thirty-seven states, other than Michigan, have adopted Bulk Sales Acts, the statutes varying to some extent, but the general purport being that a sale by a dealer of his merchandise in bulk is presumed to be fraudulent unless certain formalities, either of record or of notice to creditors, or both, be observed. The constitutionality of the Michigan statute cannot be questioned. *Spurr* v. *Travis,* 145 Mich. 721, 108 N. W. 1090. Just what is meant by the terms "fixtures" and "merchandise," as used in the act, was first fully decided in the principal case. As to the latter term, WEBSTER'S definition was accepted, the court following the path trodden by courts in sister states in their interpretation of the same term, as it appears in the statute of frauds, by saying "merchandise is an object of commerce; whatever is usually bought and sold in trade or market by merchants. *Hein* v. *O'Connor* (Tex. Civ. App.) 15 S. W. 414; *Kent* v. *Liverpool & London Insurance Co.,* 26 Ind. 294, 89 Am. Dec. 463; *Commonwealth* v. *Keller,* 9 Pa. Co. Ct. R. 253; *In re San Gabriel Sanatorium Co.,* 95 Fed. 271. The intention of the parties, as shown by the use of the article, determines whether or not it is a fixture, said the court; a fixture being such a chattel as a merchant usually annexes to his premises to enable him to store, handle and display his goods and wares. In reaching this conclusion, the court follows previous decisions of Michigan, based upon the use of the same term in the statute of frauds. *Aldine Mfg. Co.* v. *Barnard,* 84 Mich. 632; *Wheeler* v. *Bedell,* 40 Mich. 693; *Lansing Iron & Engine Works* v. *Wilbur,* 111 Mich. 413. The decision in the principal case follows within a few months a case involving practically the same facts, in which the same conclusion was reached by the court, although the matter was not discussed as fully as in the principal case. *Bowen* v. *Quigley* (Mich. 1911) 130 N. W. 690.

TORTS—MOTIVE AS AFFECTING LIABILITY—INTERFERENCE WITH BUSINESS.—Plaintiff, a retail oil dealer, commenced to buy oil from others than defendant, a wholesaler. Defendant, with the purpose of ruining the plaintiff and not of establishing a competing retail concern, went into the retail oil business which it conducted until the failure of the plaintiff. In attempting to secure plaintiff's trade, defendant's agents maliciously removed from the windows of plaintiff's customers display cards left there by plaintiff to call him when oil was wanted. *Held,* defendant, having malicious motives, had passed the limits of legitimate competition. Also, although the display cards constituted merely invitations and not orders, that fact did not justify their removal by the defendant. *Dunshee* v. *Standard Oil Co.* (Iowa 1911) 132 N. W. 371.

As a general proposition, malicious motive will not make illegal an otherwise lawful act. 2 COOLEY, TORTS, Ed. 3, p. 1505. At common law, under

the principle of laisser-faire, the motive of competition was not considered material. *Citizens Light H. & P. Co.* v. *Montgomery Co.*, 171 Fed. 553, 560. Many courts still follow this doctrine: some apparently on the basis of authority, *Mogul Steamship Co.* v. *McGregor*, L. R. 23 Q. B. 598; *Boyson* v. *Thorn*, 98 Cal. 578, 33 Pac. 492, 21 L. R. A. 233; *Guethler* v. *Altman*, 26 Ind. App. 587, 60 N. E. 355, 84 Am. St. Rep. 313, others because they believe an inquiry into the motives of men when their actions are lawful is neither wise nor politic, *Passaic Print Works* v. *Ely*, 105 Fed. 163. Numerous courts oppose these views, holding that harm done with intent and malice cannot be legalized because lawful means were used in its accomplishment. *Purington* v. *Hinchliff*, 219 Ill. 159, 76 N. E. 47, 2 L. R. A. (N. S.) 824; *Barr* v. *Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881. The most difficult phase of this question arises in cases concerning modern industrial warfare. Most authorities would agree that the true test of legitimate competition is "reasonable conduct under the circumstances." *Huskie* v. *Griffin*, 75 N. H. 345, 74 Atl. 595, 27 L. R. A. (N. S.) 966. When the question is one for the jury, as the principal case holds, the rule seems a feasible one. But when it is decided by the court, it aids the situation but little, for courts immediately differ as to what is reasonable and as to whether malicious motive affects the test. The line is well drawn in *Tuttle* v. *Buck*, 107 Minn. 145, 119 N. W. 946, 22 L. R. A. (N. S.) 599. Yet it would seem that the court in the principal case goes one step further in restricting the limits of competition, for while the motive in the Minnesota case was purely personal, in the Iowa case it was apparently commercial. See 9 COL. L. REV. 455. Certainly interference with customers such as the Standard Oil Co. indulged in, hardly can be deemed legitimate means of competition, even though no contracts existed. *West Va. Transportation Co.* v. *Standard Oil Co.*, 50 W. Va. 611, 40 S. E. 591, 56 L. R. A. 804, 88 Am. St. Rep. 895; *Rice* v. *Manley*, 66 N. Y. 82, 23 Am. Rep. 30; *Doremus* v. *Hennesy*, 176 Ill. 608, 52 N. E. 924, 43 L. R. A. 797. Inevitably the decision in these cases must rest on the fundamental policies adopted by the courts. The modern tendency seems to be leading towards a broader and clearer conception of the meaning of industrial competition—a reflection of the economic and social thought of the times. See 8 HARV. L. REV. 8; 8 MICH. L. REV. 471.

WILLS—CONTEST—NATURE OF PROCEEDINGS—WHAT LAW GOVERNS—TESTAMENTARY CAPACITY.—A testatrix died domiciled in Michigan leaving personal property in the hands of an agent in New York who also had possession of the will and codicil. He applied to the surrogate of New York for the probate of the will and codicil and three of the persons interested in the estate, including the plaintiff, appeared and contested the codicil on the ground of testamentary incapacity. The surrogate admitted both will and codicil to probate, his decision never being appealed from, but subsequently the probate court in Michigan admitted the will to probate and rejected the codicil for testamentary incapacity. *Held*, that the contest of a will on the ground of testamentary incapacity is not an ordinary action or proceeding *inter partes* and did not have the effect of binding the plaintiff either *in personam* or by way of estoppel; and as testamentary capacity is governed